

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

MANDOLA MANAGEMENT, INC.

V.

PHILADELPHIA INDEMNITY
INSURANCE COMPANY

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CAUSE NO. 1:11-cv-00478-LY

PLAINTIFF'S ADVISORY TO THE COURT

Mandola Management, Inc. ("MMI"), submits this its Advisory to the Court in response to the Court's 10/5/11 Order:

1. MMI's counsel received the Court's 10/5/11 Order on October 5th. At 2:47 p.m. that same day, MMI e-mailed Steve Brown (attorney for Duchman): *"I will call you tomorrow to confer as ordered... does 1:30 tomorrow work for you"* (10/5/11 2:47 p.m. e-mail – exh. A). At 4:43 p.m. Brown responded: *"I am not available to confer until 10/12/11..."* (exh. A).

2. On Wednesday, 10/12/11 at about 2:30 p.m. MMI counsel and Brown conferred. It was Brown's position then - and presumably now - that because the Duchman deposition went forward on 9/21/11, Duchman's Motion to Quash and MMI's Response are moot. It was and is MMI's position that MMI's response and request for attorney's fees (incurred responding to Duchman's Motion to Quash) are not moot. In addition, it is MMI's position that Duchman did not produce at the 9/21/11 deposition records sufficient to allow MMI to present its damage claims against PIIC in this lawsuit; MMI avers that the truncated QuickBooks summary that Duchman produced (deposition exh. 22) at the September 21st deposition does not represent good faith compliance with the Subpoena Duces Tecum which required Duchman to provide *"the billing or accounting records which document the attorney's fees that (Duchman) paid in defense of the (referenced lawsuits)"*. As a result, Plaintiffs will have to incur additional expense

deposing Duchman bookkeeper John Dunn on 11/3/11 (see MMI's 9/23/11 Advisory to the Court – exh. B).

3. On Friday, 10/14/11 at 8:38 a.m., MMI presented Plaintiff's draft and proposed advisory to the Court to Brown for his input and joint submission to the Court. At 2:41 p.m., Brown presented his version of the parties' "Joint Report". Because of a family emergency¹, MMI counsel did not have time between 3:00-5:00 p.m. on Friday, October 14th to re-draft or collaborate any further with Brown on the content of the parties' "Joint Report". MMI, therefore, respectfully submits this Plaintiff's Advisory to the Court.

Respectfully submitted,

Brian W. Bishop
State Bar No. 02346300
Attorney at Law
115 Wild Basin Road, Suite 106
Austin, Texas 78746
(512) 327-5121
(512) 327-5122

By: 

Brian W. Bishop

Michael J. Kuper
State Bar No. 11765000
Attorney at Law
2800 Post Oak Blvd., 61st Floor
Houston, Texas 77056-5705
(713) 892-4888
Attorneys for Plaintiffs

¹ MMI's counsel brother died Tuesday, October 11th. MMI's counsel was (and is) arranging the Saturday, October 15th memorial service on the afternoon of October 15th.

CERTIFICATE OF SERVICE

I certify that on the 14 day of October, 2011, I electronically filed the foregoing document with the United States District Court for the Western District of Texas through its Case Management/Electronic Case Files system and thereby upon all parties of record.

Steven R. Brown (via facsimile)
3331 Ranch Road 12, Suite 101
San Marcos, Texas 78666



Brian W. Bishop

Brian Bishop

From: Brian Bishop
Sent: Wednesday, October 05, 2011 4:47 PM
To: Steven R. Brown Attorney At Law
Cc: mickeykuper@yahoo.com
Subject: RE: MMI v PIIC Oct 20th hearing and order to confer

Ok although I would like to also confer regarding the depositions which I have noticed in the TC and JP cases, and whether there it is necessary to go forward Friday in the TC case on Ps' Third Motion to Compel Discovery

From: Steven R. Brown Attorney At Law [mailto:srblaw@austin.rr.com]
Sent: Wednesday, October 05, 2011 4:43 PM
To: Brian Bishop
Subject: Re: MMI v PIIC Oct 20th hearing and order to confer

I am not available to confer until Oct. 12. I can reserve some time in the afternoon if you let me know by the end of the day tomorrow.

thank you.

Steve Brown

----- Original Message -----

From: [Brian Bishop](#)
To: 'srblaw@austin.rr.com'
Cc: mickeykuper@yahoo.com
Sent: Wednesday, October 05, 2011 2:47 PM
Subject: MMI v PIIC Oct 20th hearing and order to confer

I will call you tomorrow to confer as ordered. We would like to have copies of the attorneys fees statements from the Duchman attorneys who defended the Duchmans in the TC Indemnity Suit and \$1500 in attorneys fees incurred responding to your Motion to Quash. Does 1:30 tomorrow work for you?

LAW OFFICES OF BRIAN W. BISHOP
CANYONS AT WILD BASIN
115 WILD BASIN ROAD STE 106
AUSTIN, TEXAS 78746

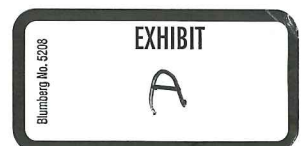
O: (512) 327.5121
F: (512) 327.5122

brianbishoplaw.com

No virus found in this message.

Checked by AVG - www.avg.com

Version: 10.0.1410 / Virus Database: 1520/3939 - Release Date: 10/05/11



IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

MANDOLA MANAGEMENT, INC.

V.

PHILADELPHIA INDEMNITY
INSURANCE COMPANY

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CAUSE NO. 1:11-cv-00478-LY

PLAINTIFF'S ADVISORY TO THE COURT

Mandola Management, Inc., Plaintiff and Respondent to non-party Duchman's Objection and Motion to Quash Deposition Notice and Subpoena (filed 9/9/11 – Clerk Docket #20) submits this its Advisory to the Court in accordance with and as required by this Court's 9/14/11 Order:

1. On 9/14/11, this Court ordered Duchman to confer with Plaintiff's counsel within five (5) business days in a good faith attempt to resolve the objections to the Duchman Subpoena (exh. A hereto).

2. On Tuesday, 9/20/11 (the day before the Duchman deposition), Steve Brown (Duchman attorney) e-mailed Brian Bishop (Plaintiff's counsel):

"I intend to produce at the deposition a summary identifying the law firms receiving payment in connection with the Bounds and first Travis County case, along with the amounts paid to each firm. I trust that this will suffice. If not, please let me know".

At 11:51 a.m. Bishop responded:

"That will work assuming that the attorney's fees in the two cases are separated so that Dr. Duchman can testify that DM, Ltd. incurred and paid X\$ in defense of the Travis County suit".

At 3:25 p.m. Bishop further communicated:

"I need actual copies of each month's billings from the law firms who represented DM, Ltd. in the first Travis County case. I agree you can redact anything that constitutes attorney-client communication". (see 9/20/11 e-mails – exh. B hereto)

Brown did not respond further to Bishop's 3:25 p.m. communication.

3. At the deposition Wednesday, 9/21/11, Duchman produced deposition exhibit #22 (exh. C hereto). Duchman testified that the amounts reflected in deposition exhibit #22 are based upon billing statements maintained by DM, Ltd. and which show the legal fees and work which are the basis of the billings, the time charged, and the fee charged for the work.

4. The one page statement (deposition exh. #22) that Duchman produced at his deposition does not provide the documentation information necessary for Plaintiff to develop and present its claim that the attorney's fees that Duchman incurred defending the Travis County Indemnity Suit (and which Plaintiff now seeks to recover to PIIC in this lawsuit) were reasonable and necessary. The statement "*Steve Brown \$33,457.96 1st Travis*" reflected in deposition exhibit #22 represents a "bare bones minimum" – and bad faith – effort on the part of Duchman and his attorney to feign compliance with the Subpoena, but is not legitimate compliance because Plaintiff is now required to incur the additional time and expense involved in deposing and subpoenaing DM, Ltd. again in order to get the documentation and information necessary to develop and present Plaintiff's claims and damages in this suit.

Respectfully submitted,

Brian W. Bishop
State Bar No. 02346300
Attorney at Law
115 Wild Basin Road, Suite 106
Austin, Texas 78746
(512) 327-5121
(512) 327-5122

By: 


Brian W. Bishop

Michael J. Kuper
State Bar No. 11765000
Attorney at Law
2800 Post Oak Blvd., 61st Floor
Houston, Texas 77056-5705
(713) 892-4888
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I certify that on the 23 day of September, 2011, I electronically filed the foregoing document with the United States District Court for the Western District of Texas through its Case Management/Electronic Case Files system and thereby upon all parties of record.

Steven R. Brown (via facsimile)
3331 Ranch Road 12, Suite 101
San Marcos, Texas 78666



Brian W. Bishop

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

MANDOLA MANAEGMENT, INC.

V.

PHILADELPHIA INDEMNITY
INSURANCE COMPANY

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CAUSE NO. 1:11-CV-00478-LY

SUBPOENA DUCES TECUM

TO ANY SHERIFF OR CONSTABLE OF THE STATE OF TEXAS or other person authorized to serve subpoenas as provided in the Texas Rules of Civil Procedure - YOU ARE HEREBY COMMANDED to summon the following witness:

Dr. Stanley Duchman
6039 Glencove Street
Houston, Texas 77007

to appear on September 21, 2011, at 10:30 a.m. at the offices of David L. Miller, MILLER, SCAMARDI & CARRABBA PC, 6525 Washington Avenue, Houston, Texas 77007-2112 and:


- (A) appear and give testimony at a hearing relating to the above-styled and -numbered cause, and remain at that place from day to day until discharged; or
- ✓ (B) appear and give testimony at a deposition relating to the above-styled and -numbered cause, and remain at that place from day to day until discharged; or
- ✓ (C) produce the documents or tangible things in your possession, custody or control listed in Exhibit "A" attached hereto:

WARNING

FAILURE OF ANY PERSON WITHOUT ADEQUATE EXCUSE TO OBEY A SUBPOENA SERVED ON THAT PERSON MAY BE DEEMED A CONTEMPT OF THE COURT FROM WHICH THE SUBPOENA IS ISSUED OR A DISTRICT COURT IN THE COUNTY IN WHICH THE SUBPOENA IS SERVED, AND MAY BE PUNISHED BY FINE, OR CONFINEMENT, OR BOTH.

This subpoena is issued at the instance of Mandola Management, Inc., in the above-referenced case, by and through its attorney of record, Brian W. Bishop.

This subpoena is issued on Aug 16, 2011, by


BRIAN W. BISHOP
THE CANYON AT WILD BASIN
115 WILD BASIN ROAD, SUITE 100
AUSTIN, TEXAS 78746
512-327-5121
512-327-5122 FACSIMILE

**AFFIDAVIT
ATTACHED**

EXHIBIT

A

Blumberg No. 5208

PROOF OF SERVICE

I, _____, accept service of this subpoena and will appear at the time and place directed in the subpoena.

Date

Signature of Witness

OFFICER'S RETURN

I, _____, am over the age of 18 years. I am not a party in the above-styled and numbered case. Came to hand on _____, at _____, _____m., and executed by delivering a copy of this subpoena to the within named _____ in person at _____ in _____ County, Texas on the _____ day of _____, 2011, at _____, _____m. A true and correct copy of this subpoena, and tendering the said witness the fees required by law at the time the subpoena was delivered.

**AFFIDAVIT
ATTACHED**

Date

Deputy/Sheriff/Constable/Other Person Authorized by Law, Harris
County, Texas

Exhibit "A"

The billing or accounting records which document the attorney's fees that the Duchmans and DuchMandola, Ltd. paid in defense of the following lawsuits:

1. Bounds v. DuchMandola, Ltd.; Cause No. D-1-GN-08-004114; and
2. Mandola Management, Inc. v. DuchMandola, Ltd.; Cause No. C-1-CV-10-006956.

AFFIDAVIT OF SERVICE

Came to hand on the 16th day of August , 2011, at 12:00 o'clock noon.
Cause No. 1:11-CV-00478-LY

Executed at 13300 Hargrave, Suite 500 Houston, Texas 77070
within the County of Harris at 1:25 o'clock pm on the 25th day
of August , 2011, by delivering to the within named:

DR. STANLEY DUCHMAN,
in person, a true copy of this SUBPOENA DUCES TECUM together with Exhibit "A"
and Notice of Intent to Take Oral/Videotaped Deposition, having first endorsed
upon such copy of such Subpoena the date of delivery, and tendering \$11 cash.

I am not a party to or interested in the outcome of the suit referenced above.
I am authorized by written order to serve citation and other notices. I am not
less than eighteen (18) years of age.

Service Fee \$

MANDOLA MANAGEMENT, INC.

Plaintiff

V.
PHILADELPHIA INDEMNITY INSURANCE
COMPANY

Defendant

By:

Andy Garza
Andy Garza, SCH-4491
(Authorized Person)

THOMAS PROCESS
809 Rio Grande Street
Suite 103
Austin, Texas 78701
(512) 320-8330

VERIFICATION

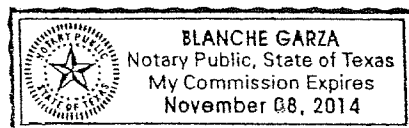
STATE OF TEXAS §
COUNTY OF HARRIS §

BEFORE ME, A NOTARY PUBLIC, on this day personally appeared
Andy Garza, SCH-4491, known to me to be the person whose name
is subscribed to the foregoing document and, being by me first duly sworn,
declared that the statements therein contained are true and correct.

Given under my hand and seal of office this 30th day of
August , A.D., 2011.

Blanche Garza
NOTARY PUBLIC, STATE OF TEXAS

55997/Mandola



IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

MANDOLA MANAGEMENT, INC.

V.

PHILADELPHIA INDEMNITY
INSURANCE COMPANY

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§

CAUSE NO. 1:11-cv-00478-LY

**AMENDED NOTICE OF INTENT TO TAKE ORAL/VIDEOTAPED DEPOSITION
OF DR. STANLEY M. DUCHMAN WITH SUBPOENA DUCES TECUM**

Under Rule 199 of the Texas Rules of Civil Procedure, you are notified you are required to be present and give your oral deposition in this case at the offices of David L. Miller, MILLER, SCAMARDI & CARRABBA, PC, 6525 Washington Avenue, Houston, Texas 77007-2112 on September 21, 2011, at 10:30 a.m. This deposition will be taken before an officer authorized by law to take deposition and will continue from day to day until completed. This deposition will be recorded by a certified court reporter and will be videotaped.

Dr. Duchman shall be examined regarding the following matters:

- a. The billing or accounting records which document the attorney's fees that the Duchmans and DuchMandola, Ltd. paid in defense of the following lawsuits:
 1. Bounds v. DuchMandola, Ltd.; Cause No. D-1-GN-08-004114; and
 2. Mandola Management, Inc. v. DuchMandola, Ltd.; Cause No. C-1-CV-10-006956.

Respectfully submitted,

By:



Brian W. Bishop
State Bar No. 02346300
115 Wild Basin Road, Suite 106
Austin, Texas 78746
(512) 327-5121 (Telephone)
(512) 327-5122 (Facsimile)
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I certify that on the 16 day of August, 2011, a true and correct copy of the foregoing was sent by facsimile to the following:

David L. Miller
MILLER, SCAMARDI & CARRABBA, PC
6525 Washington Avenue
Houston, Texas 77007-2112

A handwritten signature in black ink, appearing to read 'BWB', is written over a horizontal line.

Brian W. Bishop

Brian W. Bishop
115 Wild Basin Road, Suite 106
Austin, Texas 78746
(512) 327-5121
Fax: (512) 327-5122

FACSIMILE TRANSMITTAL SHEET

August 16, 2011

To: David Miller 713-861-3596
Steven Brown 512-392-6205

From: Brian W. Bishop

Number of pages: ___ (including cover)

Client: Mandola Management, Inc.

Re:

Message:

If you fail to receive all of the pages, or if either machine faults, please call Beverly at (512) 327-5121.

CONFIDENTIALITY NOTICE

This facsimile transmission (and/or the documents accompanying it) may contain confidential information belonging to the sender which is protected by the attorney-client privilege. The information is intended only for the use of the individual or entity named below. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or the taking of any action in reliance on the contents of this information is strictly prohibited. If you have received this transmission in error, please immediately notify us by telephone to arrange for the return of the documents.

* * * Communication Result Report (Aug. 16. 2011 11:19AM) * * *

1) Law Office Of Brian W. Bishop
2)

Date/Time: Aug. 16. 2011 11:08AM

File No.	Mode	Destination	Pg(s)	Result	Page Not Sent
1368	Memory TX Bishop Admin	917138613596 915123926205	P. 7	OK OK	

Reason for error

E. 1) Hang up or line fail
E. 3) No answer
E. 5) Exceeded max. E-mail sizeE. 2) Busy
E. 4) No facsimile connection

Brian W. Bishop
115 Wild Basin Road, Suite 106
Austin, Texas 78746
(512) 327-5121
Fax: (512) 327-5122

FACSIMILE TRANSMITTAL SHEET

August 16, 2011

To: David Miller 713-861-3596
Steven Brown 512-392-6205

From: Brian W. Bishop

Number of pages: (including cover)

Client: Mandala Management, Inc.

Re:

Message:

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Brian Bishop

From: Brian Bishop
Sent: Tuesday, September 20, 2011 3:25 PM
To: 'srblaw@austin.rr.com'
Subject: FW: response to document subpoena

I need actual copies of each month's billings from the law firms who represented DM Ltd in the first Travis County case. I agree you can redact anything that constitutes attorney client communication

From: Brian Bishop
Sent: Tuesday, September 20, 2011 11:51 AM
To: 'Steven R. Brown Attorney At Law'
Subject: RE: response to document subpoena

That will work assuming that the attorneys fees in the two cases are separated so that Dr. Duchman can testify that DM Ltd incurred and paid \$X in defense of the Travis County suit

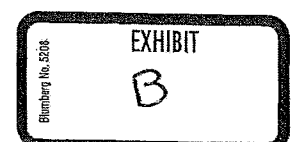
From: Steven R. Brown Attorney At Law [mailto:srblaw@austin.rr.com]
Sent: Tuesday, September 20, 2011 11:47 AM
To: Brian Bishop
Subject: response to document subpoena

Brian,

I intend to produce at the deposition a summary identifying the law firms receiving payment in connection with the Bounds and first Travis County cases, along with the amounts paid to each firm. I trust this will suffice. If not, please let me know.

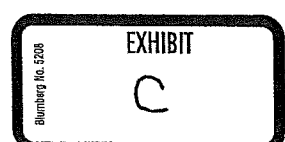
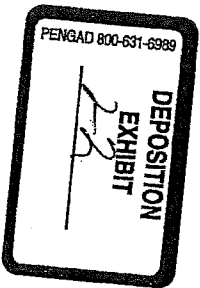
Thank you.

Steve Brown



Duchman Family Winery
Transaction List by Vendor
 December 1, 2009 through September 15, 2011

	Type	Credit
Charles Soechting - Vendor Direct		
	Bill Pmt -Check	8,925.35
Charles Soechting Legal		
	Bill Pmt -Check	1,844.59
	Bill Pmt -Check	24,378.22
Crazy Jewett & McCulley		
	Bill Pmt -Check	21,005.78
Ebe & Associates		
	Check	5,000.00 Bounds
Mark Lawless		
	Bill Pmt -Check	70,000.00 Bounds
	Bill Pmt -Check	4,058.17 Bounds
	Bill Pmt -Check	3,948.94 Bounds
Steve Brown		
	Bill Pmt -Check	33,457.96 1st Travis



Brian W. Bishop
115 Wild Basin Road, Suite 106
Austin, Texas 78746
(512) 327-5121
Fax: (512) 327-5122

FACSIMILE TRANSMITTAL SHEET

September 23, 2011

To: Steven Brown 512-392-6205

From: Brian W. Bishop

Number of pages: ___ (including cover)

Client: Damian Mandola and Trina Mandola

Re:

Message:

.

If you fail to receive all of the pages, or if either machine faults, please call Beverly at (512) 327-5121.

CONFIDENTIALITY NOTICE

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* * * Communication Result Report (Sep. 23. 2011 2:18PM) * * *

1) Law Office Of Brian W. Bishop
2)

Date/Time: Sep. 23. 2011 2:14PM

File No.	Mode	Destination	Pg (s)	Result	Page Not Sent
1533	Memory TX Bishop Admin	915123926205	P. 14	OK	

Reason for error

E. 1) Hang up or line fail

E. 3) No answer

E. 5) Exceeded max. E-mail size

E. 2) Busy

E. 4) No facsimile connection

Brian W. Bishop
115 Wild Basin Road, Suite 106
Austin, Texas 78746
(512) 327-5121
Fax: (512) 327-5122

FACSIMILE TRANSMITTAL SHEET

September 23, 2011

To: Steven Brown

512-392-6205

From: Brian W. Bishop

Number of pages: ___ (including cover)

Client: Damian Mandola and Trina Mandoia

Re:

Message:

If you fail to receive all of the pages, or if either machine faults, please call Beverly at (512) 327-5121.

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